IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

Bail Appl..No. 7568 of 2007()

CRIME NO.150/03 OF KOZHIKODE MEDICAL COLLEGE POLICE STATION, KOZHIKODE.

.....

PETITIONER/ACCUSED NO.5

P.K.FAIZAL, S/O. MOHAMMED,
POLLAKUNNAN HOUSE, THIRUVIZHAMKUNNU P.O.,
KOTTAPADAM-I VILLAGE, PALAKKAD.

BY ADV. SRI.M.C.JOHN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
REPRESENTING SUB-INSPECTOR OF POLICE, KOZHIKODE
MEDICAL COLLEGE POLICE STATION).

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/12/2007, ALONG WITH BA. NO.7570/2007 AND CONNECTED CASES THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.Nos.7568, 7570, 7571, 7572, 7573, 7574, 7575 & 7583 of 2007

Dated this the 7th day of December, 2007

ORDER

These petitions are filed by the common petitioner claiming anticipatory bail. The petitioner faces allegations in different crimes before different courts, all for offences punishable, inter alia, under Section 379 I.P.C. In all these cases, cognizance was taken by the courts concerned and reckoning the petitioner as an absconding accused, coercive processes have been issued against him. The petitioner finds such coercive processes chasing him.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful or deliberate. He is now willing to surrender before the courts concerned and apply for regular bail. But he apprehends that his application for regular bail may not be considered by the learned Magistrates on merits, in accordance with law and expeditiously. It is therefore prayed that directions under Section 438 and/or 482 Cr.P.C may be issued in favour of the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that it is for the petitioner to surrender before the learned Magistrates and seek regular bail.

4. I have considered all the relevant inputs. I find merit in the opposition by the learned Public Prosecutor. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. It is for the petitioner to appear before the learned Magistrates and explain to the learned Magistrates the circumstances under which he could not earlier appear before the learned Magistrates. I have no reason to assume that the learned Magistrates would not consider such application on merits, in accordance with law and expeditiously. Every court

must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

6. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrates and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrates must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(**R.BASANT, JUDGE**)

rtr/